IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/10/2004

CORAM

THE HONOURABLE MR. JUSTICE A.K. RAJAN

Writ Petition No.43396 of 2002

1. S.Ethendra Babu
2. M.Jayaraj
3. M.Rajkumar
4. R.Rathnasabapathi
5. R.Ganesan
6. P.Gangadaran
7. M.Venkatakrishnan
8. N.Kalyanam
9. C.S.Srinivasan
10.K.Ssubramanian
11.N.Sabapathy
12.P.Murugesan .. Petitioners

-Vs-

1. The State of Tamil Nadu
rep by the Secretary to Govt.,
Transport Dept.,
Fort St. George
Chennai 9.

2. The Administrator
Tamil Nadu State Transport Corporation
Employees Post Retirement Benefit Fund
C/o. Transport Development Finance
Corporation
93, Greams Road
Chenai 6.

3. The Tamil Nadu State Transport Corporation
Coimbatore (Division I) Ltd.,
Coimbatore,
rep by its Managing Director
37, Mettupalayam Road
Coimbatore.

4. The Metropolitan Transport Corporation Limited
rep by its Managing Director
Pallavan Salai, Chennai 2.

5. The Tamil Nadu State Express
Transport Corporation Ltd.
rep by its Managing Director
Pallavan Salai
Chennai.

6. The Tamil Nadu State
Transport Corporation
Kumbakonam (Division I) Ltd
rep by its Managing Director
Kumbakonam.

7. The Tamil Nadu State
Transport Corporation Ltd.
Villupuram (Division II) Ltd.
rep by its Managing Director
Vellore. .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus as stated therein.

!For Petitioners .. Mr. M.Palani

^For RR 1,2,4,5 .. Ms. V.Velumani, AGP
For R.3 .. Mr. R.Palanisamy
For R6 & R7 .. Mr. V.R.Kamalanathan

:O R D E R
The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in Letter No.19287/D/99-8, dated 24.9.2002, quash the same and direct the respondent- Corporation herein to pay pension to the petitioners herein in accordance with the Government Order in G.O.138, Transport (D) Department, dated 10.5.1999.

2. The petitioners, who were all Officers, were working in various Transport Corporations in the managerial cadre. In the year 1992, the Transport Corporations introduced a Post Retirement Benefit Fund Scheme. As per that scheme, the employee has to contribute Rs.50/- per month and the management would pay Rs.1,000/- as their share. The scheme was made applicable only to the employees "workers" including the Supervisors. The Federation of Officers in the cadre of management of all the Transport Corporations made a representation to the first respondent to extend the said scheme also to the Officers. Considering the representation, G.O.Ms.No.138, Transport, dt.10.5.19 99 was issued, extending the benefits to the managerial cadre, subject to the condition that Officers have to contribute Rs.1000/-

themselves apart from Rs.50/- per month from 1.9.1992. This G.O. was made applicable to all Officers who were working since 1992, even though they retired on the date of issue of the said Government Order. The petitioners herein retired before the G.O. was issued. All the Corporations sent a letter to the Officers, demanding the contribution calculated as per the G.O.; and it was paid by the petitioners. But, the Government did not pay pension, inspite of repeated requests. The respondents sent a letter, stating that the provisions of the Government Order is only prospective and it would apply for the Officers who retired on or after the date of the Government Order and not to the persons who retired before the Government Order was issued. Challenging the said letter, the present writ petition has been filed.

3. The case of the respondents, as seen from the counter affidavit, is that the Tamil Nadu State Transport Corporation employees' Post Retirement Benefit Fund Scheme was introduced with effect from 1.9.199 2; it was part of the Wage Settlement 1992; G.O.Ms.No.138, Transport Department, dated 10.5.1999, extends the benefit of pension to the Officers in the managerial cadre, who were on the rolls of the Corporations on the date of the Government Order. The Scheme was the outcome of the Wage Settlement 1992 under Section 12(3) of the Industrial Disputes Act, and as such Officers in managerial cadre were not eligible for the benefit under the Scheme as they were not parties to the settlement. Later on, on the representation made by the Officers, the Government passed the said G.O.. It applies only to the Officers in the managerial cadre, who were on the rolls of the Corporation on the date of the Order; the G.O. is only prospective. The petitioners have remitted the amount at their risk and the Corporation has not demanded contributions. The letter issued by the Corporation was without concurrence of the Government and the Administrator. It was due to mis-interpretation of the said G.O., for which the respondents are not liable. It has also instructed various Corporations to refund the amount so paid erroneously.

The said G.O.Ms.No.138, dated 10.5.1999, reads as follows:-
"The Employees Pension Benefit Scheme was introduced as a result of the agreement between the employees and the management in the year 19 92. This applies only to the workmen. But, there are about 900 Officers working in the managerial cadre and they have requested the scheme to be extended to them. The employees in the cadre of Assistant Engineer also come under the cadre of 'Award staff'. Hence, they are entitled to the benefit under the scheme. When they get promoted, they go out of the cadre of 'Award staff'. Yet, since they have already became members of the Scheme, they can continue to pay the contribution. Such persons though entered into the managerial cadre, they are eligible to get benefits under the scheme. But, at the same time, it was not extended to the persons, who were in the Officers cadre on 1.9.1992. It is considered to extend the scheme to the Officers also.

(4) The Government directs that subject to the conditions referred hereunder the Tamil Nadu State Transport Corporation Employees' Pension Benefit Scheme be extended to the persons in the Officers cadre also. The conditions were that -
(1) they shall contribute Rs.50/- per month from 1.9.1992.
(2) In respect of workmen, including the Award staff, the Management would

contribute Rs.1,000/-. In case of Officers in the managerial cadre, they shall pay Rs.1,000/-.
(3) Persons who became members of the scheme as workmen on 1.9.1992, but, later promoted to the managerial cadre are permitted to continue in the scheme paying the contribution of Rs.50/- per month."

4. Subsequent to this Government Order, various Corporations sent letters - a few letters were also filed along with the type set of papers. From this, it is seen that on behalf of the Managing Director, Tamil Nadu Transport Corporation, Coimbatore, a letter has been sent to one of the petitioners on 24.5.1999 informing him that the contribution at the rate of Rs.50/- per month together with Rs.1,000/- as their own contribution "would be deducted from V Pay Commission arrears payable to him", and on 15.7.1999 a similar letter has been sent to pay the balance amount. The Metropolitan Transport Corporation (Chennai Division-I) Limited had sent a letter stating that persons who retired after 1.9.1992 as an Officer would also get benefit of the scheme. Based on such letter, those officers also paid their contribution. The learned counsel for the petitioners submitted that these letters created an expectation among the Officers that they are eligible for the benefits under the scheme. Therefore, the respondents cannot go back from their stand.

5. In the impugned letter, the Government has stated that the retirement benefits would apply only from 10.5.1999. The argument that the scheme applied to the Officers from 1.9.1992 is not correct. The learned counsel for the respondents submitted that the G.O. is only prospective. It is applicable only to the persons in the Officers cadre on the date when the Government Order came into force, and it would not be applicable to persons who retired from service on the date of the G.O. Therefore, the plea of the petitioners cannot be accepted.

6. The case of the petitioners is that the benefits of the Wage Settlement under Section 12(3) of the Industrial Disputes Act were accepted and was also extended to the officers cadre by the Government. Extension of the scheme means extension of the benefits. So viewed, this G.O. which confers the benefit to all the Officers who were in service on 1.9.1992. Since the petitioners were members of service in Officers cadre on 1.9.1992, they are also eligible to get the benefits of the scheme. That apart the Transport Corporations themselves deducted the contribution from 1.9.1992 from the Pay Commission Arrears and any balance was directed to be paid by the petitioners; and that was also paid promptly. Therefore, it created a legitimate expectation in the minds of Officers/petitioners herein. Therefore, the Doctrine of Promissory Estoppel would also apply in this case. Under the Doctrine, when these petitioners were made to expect the benefits of the scheme by their conduct and parties performed their duties as per the promise, thereafter, the Department cannot go back from the promise. In support of his argument, he referred to the judgement of the Supreme Court in M.C.DHINGRA v.. UNION OF INDIA [(1996) 7 SCC 564]. In this case, a person, who was originally in a State service, later entered into the Central Service, and circular permitted the computation of the previous service for grant of pension and the provision in the circular confining the benefit only to

persons retiring on or after the date of issuance of the circular was held arbitrary. The Court held that a person retired earlier than the said date was also entitled to pro rata pension for previous service from the said date of circular. In UNION OF INDIA v.. DEOKI NANDAN AGGARWAL [199 2 Supp (1) SCC 323], the Supreme Court held that fixing a cut off date for liberalised scheme was held not permissible and it was made applicable to all persons. In R.L.MARWAHA v.. UNIONOF INDIA [(1987) 4 SCC 31] the Supreme Court has held that pension scheme in autonomous body, which was made applicable only to those retired on or after issuing of Office Memorandum and denied the benefit to those retired prior to that date, was held discriminatory and violative of Article 14 of the Constitution. In D.S.NAKARA v.. UNION OF INDIA [(1983) I SCC 305], the Constitution Bench of the Supreme Court has held that all pensioners have equal right to receive the benefits of liberalised pension scheme. The pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension; Criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after that date while depriving the benefits to those retiring prior to that date, was held to be violative of Article 14. It further held that the specified date is to be retained only for the purpose of re-computation of pension of those retired earlier to it. No arrears can be claimed by such pensioners. In this case, the Supreme Court also held that reading down the provision does not amount to judicial legislation and hence unconstitutional portion which is unrelated to the object sought to be achieved, can be severed and omitted from otherwise constitutional provision by reading down the provisions. It also held that the Doctrine of Severability need not only limit the scope of legislation, it can in effect, enlarge the scope of the impugned measure. The learned counsel submitted that from the principles evolved by the Supreme Court in these decisions, it is clear that fixing of a cut off date for payment of pension is not legal. Hence the impugned letter is to be quashed.

7. A portion of G.O.Ms.No.138, dated 10.5.1999. is as follows:
@fPH;f;fz;l epge;jidfSf;Fl;gl;L @jkpH;ehL khepy nghf;Ftuj;Jf;fHf bjhHpyhsh;fs; Xa;t{jpa eyj;jpl;l;ij@ nghf;Ftuj;Jf;fHfj;jpd; nkyhsh; bjhFjpapy; cs;s mYtyh;fSf;Fk; ePl;of;fyhbkd muR ,jd;tHp MizapLfpwJ/@
The above portion reads that the Government hereby order that the Tamil Nadu State Transport Corporation Employees Pension Benefit Scheme be extended to the Officers of the Transport Corporations subject to the following conditions. In the impugned letter, the word "cs;s@ in the said G.O. is interpreted as the person "serving" on the date of the Government Order. From the decisions of the Supreme Court it is seen that under similar circumstances fixing of a cut off date is not legal. It is true that reading down the Government Order would enlarge its scope. As per the decision of the Constitutional Bench of the Supreme Court (referred above) such a enlargement is permissible.

8. A perusal of the G.O. makes it clear that the pension scheme which was made applicable from 1.9.1992 for the Award staff was extended also to the persons in the Officers cadre. The Government Order has taken into account such of those persons, who were members of the award staff

on 10.5.1992, but, later entered into the Officers cadre. The G.O. made the scheme applicable to such Officers also. With this background, if the G.O. considered it is clear that the G.O. extends the scheme to the Officers also, subject to the conditions specified thereunder. From this, it appears that the said word "cs;s" means as the persons who were in the Officers cadre on the date when the pension scheme itself come into force i.e. 1.9.1992. The reading of G.O. in its entirety would convey a meaning that the pension scheme which was made applicable from 1.9.1992 to the Award staff was extended also to the Officers cadre. When the scheme had come into force on 1.9.1992 and when that was extended to Officers, it cannot be said that the scheme was extended only prospectively from the date of such extension, namely, from the date on which the G.O. was issued. Though the literal meaning of the word @cs;s@ would mean that the Officers, who "are" in service, yet, on reading the G.O. as a whole, bearing in mind the purpose for which it was passed and on the background of acceptance of representation made by the Officers, it has to be interpreted as "1.9.1992y; cs;s@ i.e. those persons who "were" in service on 1.9.1992. The word "1.9.1992" has to be read along with the word "cs;s@. Only such interpretation would be in consonance with the object of issuance of the said Government Order.

9. Further, the Officers were directed to pay the monthly contribution from 1.9.1992 and Rs.1,000/-. If the intention of the Government was to make the pension scheme applicable to the Officers only from 10.5.1999, then, there was no need to direct the Officers/ petitioners to pay contribution from 1.9.1992. To the Award staff, the scheme was applied from 1.9.1992. They were directed to pay contribution only from that date onwards. They were not directed to pay contribution from an earlier date. Therefore, from the condition that the Officers shall pay contribution from 1.9.1992 till the date of the Government Order, would mean only that the intention of the Government Order was to make it applicable to all the Officers from 1.9.1992. That was understood correctly by various Heads of the Transport Corporations and that was why they have deducted such amount payable as contribution towards this scheme from and out of the Pay Commission arrears and the individuals were also directed to pay the balance if any.

Therefore, the impugned letter that the scheme is applicable only from the date of Government Order, namely, 10.5.1999, in case of Officers, is not legally sustainable and hence, the interpretation given by the respondents in the letter is not acceptable.

10. The writ petitioners have challenged the letter written by the respondents and they have also prayed for issuance of writ of Certiorarified Mandamus to quash the letter and to direct the respondents to pay the pension as per the pension scheme. It has to be mentioned that the letter need not be and cannot be quashed as the letter is only a statement by Officers. It is not a Government Order. It may, at the most, be clarificatory of the G.O.. But, such clarification is erroneous. Therefore, the prayer of Certiorarified Mandamus as such need not be granted. Under the circumstances, a Writ of Mandamus is issued to consider the case of the petitioners in the light of this judgment, ignoring the impugned letter. The respondents are directed to pass appropriate Orders within a period of four

weeks from the date of receipt of a copy of the Order.

11. With the above direction, the writ petition is disposed of. No costs.
5.10.2004

Index: Yes
Internet:Yes

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